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July 10, 1996

BY COURIER

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Attention: Lawrence J. Spiwak
Office of General Counsel
Competition Division

Re: *Implementation of Section 34(a)(1) of the Public Utility Holding Company
Act of 1935, as Added by the Telecommunications Act of 1996,*
GC Docket No. 96-101

Dear Mr. Caton:

In accordance with a conversation with Jerry Cornfeld of the Competition Division of the Office of General Counsel, attached is an original and four copies of an Erratum to the Reply Comments filed July 5, 1996, by Massachusetts Electric Company, the Narragansett Electric Company, Granite State Electric Company, New England Power Company, and NEES Transmission Services, Inc. (collectively, "the NEES Companies") in the above-referenced proceeding. Due to a collation error during copying, page 5 of the Reply Comments was inadvertently omitted. Any questions should be directed to the undersigned.

Sincerely yours,

Nancy L. Killien

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cc: Robert J. Brill

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ORIGINAL

**Before the
Federal Communications Commission
Washington, D.C. 20054**

RECEIVED

JUL 10 1996

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In the Matter of)

Implementation of Section 34(a)(1) of)
the Public Utility Holding Company)
Act of 1935, as Added by the)
Telecommunications Act of 1996)

GC Docket No. 96-101

**REPLY COMMENTS OF
MASSACHUSETTS ELECTRIC COMPANY
THE NARRAGANSETT ELECTRIC COMPANY
GRANITE STATE ELECTRIC COMPANY
NEW ENGLAND POWER COMPANY
NEES TRANSMISSION SERVICES, INC.**

Several retail and wholesale electric utility companies within the New England Electric System (the "NEES Companies¹"), a registered public utility holding company under the Public Utility Holding Company Act of 1935 ("PUHCA"), submit these reply comments in accordance with Section 1.415 of the Federal Communications Commission's ("FCC" or "Commission") Rules and the FCC's *Notice of Proposed Rulemaking* ("NPRM") in the above-captioned proceeding.

¹The affected companies include Massachusetts Electric Company, The Narragansett Electric Company, and Granite State Electric Company--retail electric companies; New England Power Company, a wholesale electric generation and transmission company; and NEES Transmission Services, Inc., a newly-proposed subsidiary of the New England Electric System which, upon approval by the Federal Energy Regulatory Commission and the Securities and Exchange Commission, will provide transmission services over those facilities throughout the three-state service territories of the companies of the New England Electric System.

I. Introduction

The NEES Companies offer a public utility holding company perspective for the Commission's consideration in this docket, and submit replies to comments directed to establishing rules and policies for the approval of exempt telecommunications companies ("ETCs"). Promoting facilities-based local competition in telecommunications is a primary intent of the Telecommunications Act of 1996 ("the 1996 Act"). Accordingly, Section 103 of the 1996 Act amends PUHCA specifically to allow public utility holding companies to compete in the provision of telecommunications services through ETCs. The NEES Companies therefore concur with the FCC's preliminary conclusion to adopt a simple filing process for ETCs, limited to the express statutory criteria for determining ETC status.

II. Approval of an Exempt Telecommunications Company Should Not be Tied to Nondiscriminatory Access to Poles, Ducts, Conduits and Rights-of-Way

A few commenters² assert that electric utilities might engage in anticompetitive practices and deny access to their poles, ducts, conduits, and rights-of-way in favor of promoting the interests of their ETCs. These commenters suggest that the FCC should adopt stringent rules requiring proof that a utility contemplating the creation of an ETC is complying with the nondiscriminatory access provisions of the Act before approving an ETC application. The NEES Companies urge the FCC to reject this unsupported assertion which would only complicate and delay the ETC approval process and act as a barrier to entry into the telecommunications market for utilities.

² See Comments of Association for Local Telecommunications Services, Comments of American Communications Services, Inc., Comments of Bell South Corporation, Comments of Cincinnati Bell Telephone

A. Stringent ETC Provisions Would Affect Only a Small Portion of Those Utilities Seeking to Compete in the Telecommunications Marketplace and Place Them at a Competitive Disadvantage

As a general rule, only PUHCA registered holding companies will take advantage of the ETC approval process, and thus only a relatively small number of utilities would be affected by an ETC approval process that required proof of the provision of nondiscriminatory access. Because the vast majority of the utilities in this country are not within a registered holding company system, there would be no appreciable benefit to creating such a burdensome ETC application process. In fact, by placing stringent ETC approval requirements on registered holding companies, such companies would be placed at a considerable competitive disadvantage to all other utilities that do not require an ETC to pursue telecommunications opportunities.

B. The Nondiscriminatory Access Provisions of the 1996 Act are More Properly Addressed in the Existing Proceeding Involving All Utilities

The nondiscriminatory access provisions of the 1996 Act apply to *all* utilities, not just to utilities registered under PUHCA. These provisions are the subject of a separate rulemaking process³ in which the interested parties were afforded the opportunity to address nondiscriminatory access beyond the narrow context of the establishment of ETCs. It is therefore unnecessary and inappropriate to impose a separate and more burdensome set of nondiscriminatory access requirements on a small group of utilities seeking to enter the telecommunications market solely because they are PUHCA registered holding companies -- particularly when Congress expressly crafted the 1996 Act to facilitate those companies' entry into telecommunications.

³ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Notice of Proposed Rulemaking*, CC Docket No. 96-98, FCC 96-182 (released April 19, 1996).

III. Imposing Extensive Hurdles to ETC Approval Would Violate Both the Letter and Spirit of the 1996 Act

The Act outlines a simple application process to allow public utility holding companies to enter telecommunications by creating or investing in ETCs. In fact, the only requirement of the Act is that the ETC :

be engaged . . . and exclusively in the business of providing--

- (A) telecommunications services;
- (B) information services;
- (C) other services or products subject to the jurisdiction of the Federal Communications Commission; or
- (D) products or services that are related or incidental to the provision of a product or service described in subparagraph (A), (B), or (C).⁴

The 1996 Act further provides that “[a] person applying in good faith for such a determination shall be deemed an exempt telecommunications company under this section, with all of the exemptions provided under this section, until the Federal Communications Commission makes such determination.”⁵ Such a presumption of ETC status, as well as the requirement that the FCC act within a relatively short 60 days of its receipt of the application, reveals the clear intent of Congress that the process be as simple and streamlined as possible.

A number of commenters⁶ propose additional requirements for the approval of an ETC that go far beyond the simple requirements of the Act. One commenter⁷ warns that “[e]ntry into . . .

⁴ 15 U.S.C.A. § 79z-5c(a)(1) (1996).

⁵ *Id*

⁶ See Comments of Association for Local Telecommunications Services, Comments of American Communications Services, Inc., Comments of BellSouth Corporation, Comments of Cincinnati Bell Telephone

⁷ See Comments of BellSouth Corporation

telecommunications . . . by these large and powerful [public utility holding companies] necessitates [FCC] action” Yet the size (and revenues) of the telecommunications company submitting these comments show its argument to be both specious and disingenuous.

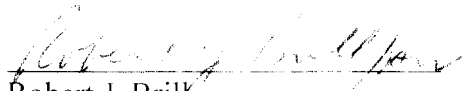
Among the additional requirements proposed by commenters were the conditioning of ETC approval on a finding that the application is in the public interest and the filing of detailed system development plans with the application. However, no other potential entrant into telecommunications--whether a competitive local exchange carrier (“CLEC”), cable television provider, exempt utility holding company, or any other telecommunications carrier--would be required to meet such extreme standards. The call by incumbent local exchange carriers, CLECs and cable television providers for a difficult and time-consuming ETC review process can only be an attempt to impede, and perhaps prevent, the market entry of potential competitors.

IV. Conclusion

The intent of the 1996 Act is to lower barriers to entry to the telecommunications market, not to raise new barriers. To impose a difficult, time-consuming and expensive approval process on one small class of potential market entrants would serve to stifle, rather than promote, competition in the provision of telecommunications services. The NFES Companies therefore respectfully request that the Commission implement the ETC provisions of the Act in a manner that fulfills the intent of the Act to promote facilities-based local competition in telecommunications. Any rules adopted concerning the approval of ETCs should provide for a simple process, with minimal requirements that do not impose burdens on registered utility holding companies that are not imposed on any other market entrant.

Respectfully submitted,

**MASSACHUSETTS ELECTRIC COMPANY
THE NARRAGANSETT ELECTRIC COMPANY
GRANITE STATE ELECTRIC COMPANY
NEW ENGLAND POWER COMPANY
NEES TRANSMISSION SERVICES, INC.**



Robert J. Brill

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July 5, 1996

CERTIFICATE OF SERVICE

I, Ivonne Diaz, do hereby certify that on this 10th day of July 1996, a true and correct copy of page 5 of the foregoing Reply Comments of NEES Companies was served via hand delivery and U.S. regular mail to the following:

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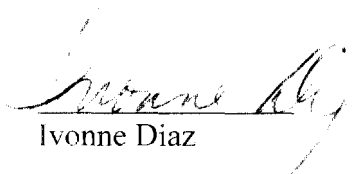
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